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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

2340

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Application Number

10/688,157

Filed

10/17/2003

First Named Inventor

Mangal

Art Unit

2681

Examiner

Addy

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record. 41,962  
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Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

March 27, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.



\*Total of \_\_\_\_\_ forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Docket No. 2340)**

In re the Application of: )  
Manish Mangal and ) Art Unit: 2681  
Kevin O'Connor )  
Serial No.: 10/688,157 )  
Filed: October 17, 2003 ) Examiner: Anthony S. Addy  
For: Method and System for Predictive ) Confirmation No. 9209  
Resource Management in a )  
Wireless Network )

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

## **REASONS FOR REVIEW OF FINAL REJECTION**

Applicant requests review of the final rejection mailed December 28, 2005, because the Examiner has clearly erred in rejecting the independent claims as being anticipated under § 102.

## 1. The Claimed Invention

Applicant's claims are directed to methods and systems for allocating bandwidth among multiple *mobile stations* operating in a given area. Each of the independent claims, i.e., claims 1, 9, 16, and 19, recites functions related to determining a threshold number of *mobile stations*, as summarized below:

- Claims 1 and 19 each recite “determining that a threshold number of *mobile stations* being provided communication services are concurrently operating in the given coverage area.”
- Claim 16 recites “determining that a number of *mobile stations* concurrently being provided communication services by the wireless network is below a predetermined threshold.”
- Claim 20 recites “program logic ... to determine that a threshold number of *mobile stations* are operating concurrently in the given coverage area.”

## 2. **Status of the Claims**

Claims 1-24 are currently pending. Claims 1-2, 6, 8-10, 14, 16-20, and 24 stand rejected under § 102(b) as being anticipated by Spinar et al., U.S. Pub. No. 2002/0080816 (“Spinar”). The remaining claims stand rejected under § 103(a) as being unpatentable over Spinar.

## 3. **The Examiner’s Clear Error**

The Examiner’s rejections of each of the independent claims as being anticipated by Spinar, are based on the Examiner’s clearly erroneous position that the Customer Premises Equipment (CPE) 110 in Spinar are inherently mobile stations. In order to show that the CPEs are inherently mobile stations, the Examiner has the burden of showing that the CPEs are *necessarily* mobile stations:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

MPEP § 2112(IV) (emphasis original). Thus, even if the Examiner were to show that the CPEs may be mobile stations (and he has not), that would still be insufficient to establish inherency:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

MP&P § 2112(IV) (emphasis original).

In this case, Spinar makes clear that the CPEs are not mobile stations because the CPEs are in **fixed** locations:

The broadband wireless system facilitates two-way communication between a base station and a plurality of **fixed** subscriber stations or Customer Premises Equipment (CPE) stations.

(paragraph 5); and:

Each cell 102 provides wireless connectivity between the cell's base station 106 and a plurality of customer premises equipment (CPE) 110 positioned at **fixed** customer sites 112 throughout the coverage area of cell 102.

(paragraph 8). In the face of this disclosure, the Examiner cannot show that the CPEs are **necessarily** mobile and, thus, cannot establish that the CPEs are inherently mobile stations.

The Examiner's argument for inherency (*see* Final Office Action, p. 2) is based on paragraph 192 of Spinar. That paragraph mentions an embodiment wherein satellites replace the base stations and states that the CPEs may not be at fixed distances from the satellites. However, the Examiner has acknowledged that the satellites would be moving with respect to the earth (*see* Statement of Substance of Interview). Thus, it is the motion of the **satellites**, not of CPEs, that accounts for why the CPEs may not be at fixed distances from the satellites. Accordingly, paragraph 192 does not indicate that the CPEs are mobile and does not support the Examiner's argument that the CPEs are inherently mobile stations.

Because the Examiner cannot show that the CPEs in Spinar are necessarily mobile stations, the Examiner's § 102 rejections, which treat the CPEs as inherently mobile stations, are clearly erroneous.

4. Conclusion

For the foregoing reasons, Applicant submits that all of the pending claims should be allowed.

Respectfully submitted,

**McDONNELL BOEHNEN  
HULBERT & BERGHOFF LLP**

Date: March 27, 2006

By:

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